



DAK

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: WEAVER ET AL	Examiner: A. K. ROBINSON BOYCE
Serial No.: 10/002,566	Group Art Unit: 3639
Filed: NOVEMBER 1, 2001	Docket No. 5603USA
For: SYSTEM AND METHOD FOR CATEGORY MANAGEMENT ANALYSIS	(GMI0055/US)

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

I CERTIFY THAT ON MARCH 19, 2007, THIS PAPER IS BEING
DEPOSITED WITH THE U.S. POSTAL SERVICE AS FIRST CLASS
MAIL IN AN ENVELOPE ADDRESSED TO: COMMISSIONER FOR
PATENTS, P.O. BOX 1450, ALEXANDRIA, VA 22313-1450.

Mary C. Deutsch
MARY C. DEUTSCH

APPEAL BRIEF

Dear Sir or Madam:

This Appeal Brief is being submitted in support of an Appeal from the Final Rejection mailed December 21, 2006, (received in the Patent Office December 26, 2006) in connection with the above-identified patent application.

Applicant hereby requests a One Month Extension of Time for this Appeal Brief, said period being extended from February 21, 2007 to March 21, 2007.

Enclosed is a check in the amount of \$620.00, corresponding to \$500.00 for the Appeal Brief Fee and \$120.00 for a one month extension of time. Should any additional fee be required, the Commissioner is authorized to charge Kagan Binder Deposit Account No. 50-1775 and thereafter is requested to notify us of the same.

It is believed that no other fee(s) are required in filing this paper. However, if any other fee(s) are required, then Applicants hereby authorize such fee(s) therefore to be charged to the Kagan Binder Deposit Account No. 50-1775 and notify us of the same.

03/22/2007 HGUTENR1 00000006 10002566

01 FC:1402 500.00 OP

03/22/2007 HGUTENR1 00000006 10002566

02 FC:1251 120.00 OP

Table of Contents

	<u>Page</u>
I. Real Party in Interest	3
II Related Appeals and Interferences	4
III. Status of Claims.....	5
IV. Status of Amendments.....	6
V. Summary of Claimed Subject Matter	7
VI. Grounds of Rejection to be Reviewed on Appeal	8
VII. Argument	9
VIII. Claims on Appeal Appendix	19
IX. Evidence Appendix.....	21
X. Related Proceedings Appendix.....	22

I. Real Party in Interest

General Mills Marketing, Inc., the assignee of record, is the real party in interest.

II. Related Appeals and Interferences

There are no related appeals or interferences.

III. Status of Claims

Claims 5-8, 10-13 and 15-20 are pending in the above-identified patent application. The Examiner has finally rejected all of these claims.

Claims 6, 15, 18, 20 have been rejected under 35 U.S.C. 102(e) as being anticipated by Dippold (U.S. 2002/0133479 A1).

Claim 5 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Dippold (U.S. 2002/0133479 A1) as applied to claim 6 above.

Claims 7-13, 16, 17 and 19 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Dippold (U.S. 2002/0133479 A1) as applied to claim 6 above, and further in view of McConnell et al (U.S. 2001/0049690 A1).

These rejections of claims 5-8, 10-13 and 15-20 are the subject of this appeal.

IV. Status of Amendments

There were no amendments after the final rejection proposed in this application.
All previous amendments have been entered.

V. Summary of Claimed Subject Matter

The present invention relates to a category management method for procurement, stocking, advertising and/or selling of various products by retailers. “Category Management” is more than simply carrying out inventory control, but involves understanding the product desires of the customer demographic of a particular store, and recognizing the best product offerings and presentation of the products within that retail location to maintain customer and generate more sales. (page 1, paragraph [0003]). Collection and correlation of information needed to carry out such analysis can be extremely burdensome, and taking the next step to actually carry out the analysis meaningful to a specific retail location is overwhelmingly difficult. (page 4, paragraphs [0009] and [0010]).

The present method as described in independent claim 6 (the sole independent claim pending) is a category management method comprising obtaining data from plural data sources including a consumer purchase tracking data set and a demographics data set, using automated analysis to analyze the obtained data, and providing an integrated category management report based at least in part on the analysis. An integrated category management report is not a mere organization of information from various databases, but instead is a targeted opportunity assessment and market analysis at least partially customized for the intended end user. (page 7, paragraph [0018]).

This invention provides significant advantages in providing timely relevant information to retailers that can be tailored to provide useful information for operation of a single retail outlet. Through the method of the present invention, multiple dynamically changing data streams can be analyzed to provide a sophisticated retail marketing plan that far exceeds the capabilities and impact of ordinary inventory control techniques. Further, the method of the present invention makes such sophisticated opportunity assessments and market analyses available to smaller retailers and to a degree of detail that was not possible before. See the present specification at pages 4-6.

VI. Grounds of Rejection to be Reviewed on Appeal

The following grounds of rejection are to be reviewed in this Appeal:

1. Does Dippold teach the presence of all of the elements of claims 6, 15, 18, and 20?
2. Has the Examiner established a *prima facie* case to support his rejection of claim 5 under 35 USC 103(a) over Dippold?
3. Has the Examiner established a *prima facie* case to support his rejection of claims 7-13, 16, 17 and 19 under 35 USC 103(a) over Dippold as applied to claim 6 above, and further in view of McConnell et al)?

VII. Argument

A. DIPPOLD DOES NOT TEACH THE PRESENCE OF ALL OF THE ELEMENTS OF CLAIMS 6, 15, 18 AND 20.

Claim 6, the only independent claim as rejected, describes a category management method comprising at least the following elements:

- 1 - data is obtained from plural data sources including a consumer purchase tracking data set and a demographics data set;
- 2- automated analysis is used to analyze at least a portion of said obtained data;
- 3- an integrated category management report is provided based at least in part on said analysis; and
- 4- the integrated category management report is a targeted opportunity assessment and market analysis at least partially customized for the intended end user.

Dippold describes a market research database that facilitates the management of, and access to, information related to product categories. This system collects data about products from various sources and links this information by UPC code. See paragraphs [0007], [0024], [0025] and [0033]. The thus correlated information can be retrieved by UPC code, and on a selective basis can be made available for purchase by third parties on a controlled and restricted basis. See Paragraph [0008].

The Final Office Action states that paragraph [0002] of Dippold teaches a targeted opportunity assessment. However, the information provided at this paragraph of Dippold relates to background market research data regarding the buying habits of product purchasers provided by a commercial source such as A.C. Nielsen Company. This data thus relates to general trends with respect to a demographic of purchasers, and does not provide a “targeted opportunity assessment at least partially customized for the intended end user” (i.e. the retailer) as required by the present claims.

The system discussed in Dippold is in fact, identified in the present application as one of the data inputs to be contained in the supporting database. See instant page 9, line

11, which describes the market research data provided by the A.C. Nielsen Company. The data as described in Dippold therefore corresponds only to the first element of the present claim, (i.e. “obtaining data”). As noted above, Claim 6 provides three additional elements that are not described by the Dippold disclosure.

As can be seen in the Assessments and Analysis reports of Figs 9A-F, the report element (element number 3 above) as claimed is not a mere communication of identified data from various databases, but an integrated category management report that provides a sophisticated retail marketing plan.

Because the disclosure of Dippold stops at the first step of the three part process recited in claim 6 (and thus describes only one of the above listed four elements of the claim), the present claims are not anticipated by this reference.

The Advisory Action reveals an important misinterpretation of Dippold vis-à-vis the instant claims by the Examiner, which explains in part why this reference is improperly cited as anticipatory of the present claims. The Advisory Action characterizes the reference as providing reports of the buying habits of population segments, stating that

retrieval of the report based on specific products vs. demographics represents customization. In this case, the end user is part of a specific population segment, so the target opportunity assessment is at least partially customized for the intended end user (emphasis added).

As stated above, the reports of Dippold relate to the buying habits of purchasers in the general population. The Examiner has unfortunately labeled these purchasers as “end users.” This same term, however, is used in a very different way in the present claims and specification. The present specification makes it clear that the “end user” recited in the present claims is the retailer that will use the present method, and not the purchaser of the product. See, e.g., instant page 7, lines 15-17.

It is respectfully submitted that the Dippold disclosure relating to background market research data regarding the buying habits of product purchasers does not anticipate the presently claimed method for providing an integrated category management

report that is a targeted opportunity assessment and market analysis at least partially customized for the intended retailer end user.

CLAIM 15

Claim 15 has specifically been discussed in the outstanding 102(e) rejection, stating that Dippold discloses pricing suggestions at paragraph [0020]. It is respectfully submitted that this disclosure relates to historical pricing information of products purchased by panelists, and does not describe pricing suggestions. The Advisory Action asserts that because panelist price data is used for report generation, this data alone

represents a price suggestion since it is part of the report which a supplier can make conclusions regarding the types of people purchasing its product and can therefore incorporate these types of findings into product sales data as shown in [0004].

It is respectfully submitted that providing historical panelist price data that the supplier then can further draw conclusions about is clearly different from making actual pricing suggestions to a retailer. It is respectfully submitted that claim 15 is not anticipated by the Dippold disclosure.

CLAIM 18

Claim 18 has specifically been discussed in the outstanding 102(e) rejection, focusing on the consumer assessment report segment. As discussed above, the data described in paragraph [0002] of Dippold is an input of the presently claimed method, and is clearly not a targeted opportunity assessment at least partially customized for the intended end user. While a report prepared in accordance with the present invention will include data as described in Dippold in support of the complete targeted opportunity assessment, the Dippold disclosure falls short of a disclosure of a complete integrated category management report that is a targeted opportunity assessment and market analysis at least partially customized for the retailer (i.e. the intended end user). It is respectfully submitted that claim 18 is not anticipated by the Dippold disclosure.

CLAIM 20

Claim 20 has specifically been discussed in the outstanding 102(e) rejection, focusing on the preferred embodiment where one of the data sets relates to cereals. As noted above, however, the disclosure of Dippold stops at the first step of the three part process recited in claim 6. Applicant does not claim to be the first to present data related to breakfast cereals, but does claim to be the first to obtain data, perform a subsequent automated analysis on the obtained data, and then generate a targeted opportunity assessment at least partially customized for the intended end user. It is respectfully submitted that claim 20 is not anticipated by the Dippold disclosure.

B. THE EXAMINER HAS NOT ESTABLISHED A *PRIMA FACIE* CASE TO SUPPORT THE REJECTION OF CLAIM 5 UNDER 35 USC 103(A) OVER DIPPOLD.

Claim 5 has additionally been rejected as being obvious in view of Dippold.

The claimed category management method as described in the independent claim comprises a plurality of steps to provide a targeted opportunity assessment and market analysis that is at least partially customized for the intended end user. The first step is to obtain data from plural data sources including a consumer purchase tracking data set and a demographics data set, such as disclosed in the Dippold reference. The next step is to use automated analysis to analyze at least a portion of said obtained data. The output of this analysis is to provide an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for the intended end user.

Claim 5 specifies that further detailed information is dynamically included or excluded from the report depending on whether additional analysis results are available. This additional feature beneficially provides a flexible report that includes or excludes information, further tailoring the opportunities and market analysis at a customized level, providing specific value for the retailer.

As explained above, Dippold provides a database of background information, and does not carry out the additional steps of automated analysis and providing an integrated category management report that is a targeted opportunity assessment and market analysis at least partially customized for the intended end user. Dippold provides no teaching or suggestion to motivate one to carry on the additional steps required in the present claims. The skilled artisan is not taught, and would not have contemplated, preparation of a complete targeted opportunity assessment and market analysis at least partially customized for the intended end user in view of the Dippold disclosure.

The Final Office Action asserts that adding or removing data is obvious simply because “the reports are produced from the data stored in the database, and if the data in the database changes, so will data in the final report.” (Final Rejection page 6).

Dippold does not describe a system that performs analysis on the collected data and generates a targeted opportunity assessment at least partially customized for the intended end user. Further, Dippold fails to teach or suggest a method that would provide such an integrated category management report using automated analysis as presently required, which provides timely relevant information to retailers that that far exceeds the capabilities and impact of previous inventory control techniques. Because the presently claimed method uses automated analysis to provide a targeted opportunity assessment at least partially customized for the intended end user, the method of the present invention makes sophisticated opportunity assessments and market analyses available to smaller retailers and to a degree of detail that was not possible before.

It is respectfully submitted that disclosure of a product sale database that changes content does not render obvious a category management method claim comprises the steps of obtaining data from plural data sources including a consumer purchase tracking data set and a demographics data set, using automated analysis to analyze at least a portion of said obtained data, and providing an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for the intended end user, and additionally requiring that further detailed information is

dynamically included or excluded from the report depending on whether additional analysis results are available.

C. THE EXAMINER HAS NOT ESTABLISHED A *PRIMA FACIE* CASE TO SUPPORT THE REJECTION OF CLAIMS 7-13, 16, 17 AND 19 UNDER 35 USC 103(A) OVER DIPPOLD IN VIEW OF McCONNELL.

The present invention provides an integrated category management report using automated analysis that is a targeted opportunity assessment and market analysis at least partially customized for the intended end user. By using the steps set forth in the instant claims, the resulting report is focused for the intended end user, timely, and contains more relevant information and recommendations than was ever possible before the present invention.

As discussed above, Dippold discloses a market research database that stores information related to product sales. The system described in Dippold thus is directed for use by marketers or manufacturers (see paragraph [0002]).

McConnell discloses an inventory control system that monitors the effective velocity of items through a store or warehouse. This system provides effective inventory control (i.e., tells the store inventory manager when to restock product), which is very useful and important in operating a store or a group of stores.

The two systems described in the cited prior art are separate tools that are addressed to different professionals in the retail industry – the marketer/manufacturer and the store manager in charge of stock inventory. It is respectfully submitted one would not have been motivated to combine these references because of their different applications and intended users. Additionally, even if one would combine the references, the combination falls far short of teaching or suggesting an integrated category management report using automated analysis that is a targeted opportunity assessment and market analysis at least partially customized for the intended end user, as presently claimed. Neither reference performs or suggests an automated assessment as required in the present claims, and neither reference suggests generation of a targeted opportunity

assessment and market analysis. Such a report would not have been contemplated, because the references do not address the unique challenges of category management issues related to decreased sales and diminished customer satisfaction that occurs by staying with established stocks of products. See instant paragraph [0004]. Thus, the presently claimed invention efficiently addresses problems that are not considered by the cited prior art.

It is respectfully submitted that the present claims are not obvious over Dippold in view of McConnell.

CLAIMS 7, 12 AND 13

Claims 7, 12 and 13 have specifically been discussed in the outstanding 103(a) rejection, focusing on the preferred embodiments where a report is delivered over a network, the Internet or a LAN. As noted above, the references fail to teach or suggest an integrated category management report as presently claimed. Because the present report itself is not obvious as discussed above, dependent claims additionally reciting the method of communicating the report are also not obvious.

CLAIM 8

Claim 8 has specifically been discussed in the outstanding 103(a) rejection, focusing on the preferred embodiment where the integrated category management report includes interactive fields, citing to Dippold paragraph [0036] that teaches about refreshing the information in the database. However, an interactive field as defined in the present specification at paragraph [0057] on page 20 is a field that a user can "click" on or otherwise select portions thereof and additional detail can be displayed in response to provide a targeted tactical drilldown. This is a different concept from that taught in the discussed portion of Dippold.

In the Advisory Action, it is apparent that the Examiner is improperly not taking into account the definitions of the key term "interactive field" as provided in the present specification. It is respectfully submitted that the claim, when properly read in light of the specification, clearly relates to a different concept than taught by the reference.

CLAIM 10

Claim 10 has specifically been discussed in the outstanding 103(a) rejection, focusing on the preferred embodiment where further detailed information can be dynamically included or excluded from the integrated category management report depending on whether additional analysis results are available. As noted above, the references fail to teach or suggest an integrated category management report as presently claimed. Because the present report itself is not obvious as discussed above, dependent claims additionally reciting the dynamic inclusion or exclusion of information from this report also is not obvious.

CLAIM 11

Claim 11 has specifically been discussed in the outstanding 103(a) rejection, focusing on the preferred embodiment where a score card is provided that tracks the category management over time.

In the present specification, a score card is defined in paragraph [0016] as a formatted presentation tracking retailer progress after objectives and action plans have been defined. In contrast, paragraph [0033] of Dippold does not describe a score card, but rather discusses “scoring rules” for a data mining software program. Thus, the subject matter of the present claim is in no way taught or suggested by Dippold. In the Advisory Action, it is apparent that the Examiner is improperly ignoring the definitions of the key term “scorecard” as provided in the present specification. It is respectfully submitted that the claim, when properly read in light of the specification, clearly relates to a different concept than taught by the reference.

CLAIMS 16 AND 17

Claims 16 and 17 have specifically been discussed in the outstanding 103(a) rejection, focusing on the preferred embodiment where the report includes at least one suggestion for improving the sales of a category of products.

It is respectfully submitted that the teachings of McConnell are not directed to suggestion for improving the sales of a category of products, but rather directed to

methods to identify out-of-stock situations and to predict these situations for inventory control. As discussed above, an integrated category management report that is targeted opportunity assessment and market analysis evaluates the mix of products and brands, and identifies combinations to yield better results, generate more sales and improve customer satisfaction. The integrated category management report as claimed is not suggested by an inventory control method as described in McConnell.

In the Advisory Action, the Examiner points to paragraph [0004] to indicate that “suppliers can make conclusions regarding the types of people purchasing its products, and can use findings to incorporate into product sales data.” It is respectfully submitted that this misses the point of the present invention, which provides a system using automated analysis to provide an integrated category management report. Because of the present method, retailers are provided with suggestions automatically, and do not have to engage in the labor intensive weighing of factors to provide the conclusions identified in the Advisory Action.

CLAIM 19

Claim 19 has specifically been discussed in the outstanding 103(a) rejection, focusing on the preferred embodiment where the data sources include a planogram.

As noted above, the references fail to teach or suggest an integrated category management report as presently claimed. Because the present report itself is not obvious as discussed above, dependent claims additionally reciting the inclusion of a planogram in the report of the inventive method also is not obvious.

Conclusion

It is respectfully submitted that the Appellant's have shown that the rejections of claims 5-8, 10-13 and 15-20 are unsound and must be reversed. It is also respectfully submitted that that the pending claims are in condition for immediate allowance. Favorable action by the Board and allowance of all claims is, therefore, respectfully solicited.

Dated: March 19, 2007

Respectfully Submitted,

By: 

Dale A. Bjorkman, Reg. No. 33,084

Customer Number 33072

Phone: 651-275-9844

Facsimile: 651-351-2954

VIII. Appendix – Claims on Appeal

1-4. (cancelled)

5. The method of claim 6 further including dynamically including or excluding further detailed information from said report depending on whether additional analysis results are available.

6. A category management method comprising:
obtaining data from plural data sources including a consumer purchase tracking data set and a demographics data set;
using automated analysis to analyze at least a portion of said obtained data; and
providing an integrated category management report based at least in part on said analysis, said integrated category management report being a targeted opportunity assessment and market analysis at least partially customized for the intended end user.

7. The method of claim 6 further including delivering said integrated category management report at least in part over a network.

8. The method of claim 7 wherein said integrated category management report includes interactive fields that can call up additional information.

9. (cancelled)

10. The method of claim 7 further including dynamically including or excluding further detailed information from said integrated category management report depending on whether additional analysis results are available.

11. The method of claim 7 further including providing a score card that tracks said category management over time.

12. The method of claim 7 wherein said network is the Internet.
13. The method of claim 7 wherein said network is a local area network.
14. (cancelled)
15. The method of claim 6 wherein said integrated category management report includes a pricing suggestion for at least one product.
16. The method of claim 6 wherein said integrated category management report includes at least one suggestion for improving the sales of at least one product.
17. The method of claim 6 wherein said integrated category management report includes at least one suggestion for improving the sales of a category of products.
18. The method of claim 6 wherein said integrated category management report includes at least one report segment selected from the group consisting of consumer assessment, category assessment, pricing analysis, promotion analysis, placement analysis, and product assortment analysis.
19. The method of claim 6 wherein said data sources further include at least one planogram.
20. The method of claim 6 wherein at least one of said data sets relates to cereal.

IX. Appendix - Evidence

There is no evidence to be included in Appendix IX.

X. Appendix - Related Proceedings

There are no related appeals or interferences.